

## LEGAL MEMO

**TO:** SJ11 TASK FORCE MEMBERS  
**FROM:** MICHAEL S. KAKUK, ATTORNEY  
**RE:** MEMO RE: SB0110 AS AMENDED IN SENATE LOCAL  
GOVERNMENT  
**DATE:** MARCH 29, 2007

### PURPOSE AND DISCLAIMER

I have been asked to prepare a brief summary of SB0110 as amended in the Senate. This is provided below. Please Note: This memo has not been reviewed by Task Force members and their comments on intent and impact of this bill as amended may vary. The comments in this memo are mine alone and have not been reviewed or approved by any other group or individual.

**BILL NUMBER:** SB0110.02

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**Section 1.** Section 7-2-4305, MCA, is amended to read:

**"7-2-4305. Provision of services.** In all cases of annexation under current Montana law, services must be provided according to a plan provided by the municipality as specified in 7-2-4732, except:

—(1) as provided in 7-2-4736 $\frac{1}{2}$ , and;

(2)(1) in first-class cities when otherwise mutually agreed upon by the municipality and the real property owners of the area to be annexed; or

(2) in second-class and third-class cities when otherwise mutually agreed upon by the municipality and the real property owners of the area to be annexed and when:

(a) the city has adopted standards for the services to be provided; and

(b) the agreement between the municipality and the real property owners addresses how services will be extended to the annexed property."

***MSK Comments:*** Allows 2<sup>nd</sup> and 3<sup>rd</sup> class cities to enter into agreements to provide services to annexing properties when standards have been adopted.

**Section 2.** Section 7-2-4503, MCA, is amended to read:

**"7-2-4503. Restrictions on annexation power.** ~~Land shall~~ Except when annexation is in accordance with a growth policy adopted by the municipality, land may not be annexed under this part whenever the land is used:

(1) for agricultural, mining, smelting, refining, transportation, or any industrial or manufacturing purpose; or

(2) for the purpose of maintaining or operating a golf or country club, an athletic field or aircraft landing field, a cemetery, or a place for public or private outdoor entertainment ~~or any purpose incident thereto.~~"

***MSK Comments: Currently, if property is wholly surrounded by a city, it may be annexed without the consent of the land owner and such annexation is not subject to any protest provision. (See §7-2-4502.)***

***However, if the property is used for the above identified purposes, even if located far inside of a municipality, it may not be annexed without the land owners consent or right to protest. The current law could set up potential inequities regarding the provision of essential services. The amendments to this section allow annexation of identified wholly surrounded property without the consent or the ability to protest - if such annexation is in accordance with the terms of the adopted Growth Policy.***

**Section 3.** Section 7-2-4608, MCA, is amended to read:

**"7-2-4608. Restrictions on annexation power.** (1) ~~No territory which, at the time such petition for such proposed annexation is presented to such council or legislative body, forms any part of any incorporated city or town shall~~ The property to be annexed may not be annexed under the provisions of this part if, at the time the petition for annexation is presented to the council or legislative body of a municipal corporation, the property to be annexed forms any part of any incorporated city or town.

(2) (a) ~~No A parcel of land which, at the time such petition for such proposed annexation is presented to such council or legislative body, is used in whole or in part for agricultural, mining, smelting, refining, transportation, or any industrial or manufacturing purpose or any purpose incident thereto shall~~ may not be annexed under the provisions of this part if, at the time the petition for annexation is presented to the council or legislative body of a municipal corporation, the parcel is used in whole or in part for agricultural, mining, smelting, refining, transportation, or any industrial or manufacturing purpose.

(b) Subsection (2)(a) does not apply when the petition presented to the council or legislative body is signed by all of the owners of all of the land

proposed to be annexed and the annexation complies with the growth policy adopted by the municipality."

***MSK Comments: Currently, even if annexation is requested by the land owners, it may not be possible for a city to annex property used for the land uses identified above. This section allows for annexation by petition if all landowners in the area proposed to be annexed agree to such annexation.***

**Section 4.** Section 70-23-301, MCA, is amended to read:

**"70-23-301. Contents of declaration.** A declaration ~~shall~~ must contain:

- (1) a description of the land, whether leased or in fee simple, on which the building is located or is to be located;
- (2) the name by which the property ~~shall~~ will be known and a general description of the building, including the number of stories and basements, the number of units, and the principal materials of which it is constructed;
- (3) the unit designation, location, approximate area of each unit, and any other data necessary for proper identification;
- (4) a description of the general common elements and the percentage of the interest of each unit owner ~~therein~~ in the common elements;
- (5) a description of the limited common elements, if any, stating to which units their use is reserved and in what percentage;
- (6) a statement of the use for which the building and each of the units is intended;
- (7) the name of a person to receive service of process in the cases provided in 70-23-901 and the residence or place of business of ~~such~~ the person, which ~~shall~~ must be within the county in which the property is located;
- (8) an exhibit containing certification from the applicable local government that the condominiums are either exempt from review under Title 76, chapter 3, or have been subjected to review under Title 76, chapter 3;
- ~~(8)~~(9) any other details regarding the property that the person executing the declaration considers desirable."

***MSK Comments: Prevents the creation of condos without notification to local government regarding the landowners' intent to construct. This section does not grant any additional regulatory authority over condos through the Subdivision Act nor does it address, and is not intended to address, the larger "Liberty Cove" condo issue.***

**SECTION 5. SECTION 76-1-103, MCA, IS AMENDED TO READ:**

**"76-1-103. Definitions.** As used in this chapter, the following definitions apply:

- (1) "City" includes incorporated cities and towns.
- (2) "City council" means the chief legislative body of a city or incorporated town.
- (3) "Governing body" or "governing bodies" means the governing body of any governmental unit represented on a planning board.
- (4) "Growth policy" means ~~a comprehensive development plan, master plan, or comprehensive plan that was adopted pursuant to this chapter before October 1, 1999, or~~ a policy that was adopted pursuant to this chapter on or after October 1, 1999.

***MSK Comments: This amendment clarifies that master plans or comprehensive plans are no longer considered, and may not be used as, growth policies. Note: There is no requirement to have a growth policy unless the jurisdiction is going to adopt zoning.***

- (5) "Mayor" means mayor of a city.
- (6) "Neighborhood plan" means a plan for a geographic area within the boundaries of the jurisdictional area that addresses one or more of the elements of the growth policy in more detail.
- (7) "Person" means any individual, firm, or corporation.
- (8) "Planning board" means a city planning board, a county planning board, or a joint city-county planning board.
- (9) "Plat" means a subdivision of land into lots, streets, and areas, marked on a map or plan, and includes replats or amended plats.
- (10) "Public place" means any tract owned by the state or its subdivisions.
- (11) "Streets" includes streets, avenues, boulevards, roads, lanes, alleys, and all public ways.
- (12) "Utility" means any facility used in rendering service that the public has a right to demand."

**Section 6. Section 76-1-108, MCA, is amended to read:**

**"76-1-108. ~~City-county planning~~ City or city-county planning board as a zoning commission.** The city council may in its discretion require the ~~city-county~~ city or city-county planning board to function as the zoning commission authorized under 76-2-307."

***MSK Comments: Currently, there is no authority for a city to allow its city planning board to act as a zoning commission. This section allows a city to use its city planning board as a city zoning commission.***

**Section 7.** Section 76-1-109, MCA, is amended to read:

**"76-1-109. Interaction of local government and ~~city-county~~ planning board.** The governing bodies of the city or county shall give consideration to recommendations of the ~~city-county~~ applicable planning board, but the governing bodies ~~shall not be~~ are not bound by ~~such~~ the recommendations."

***MSK Comments: This section clarifies the role of all planning boards.***

**Section 8.** Section 76-1-202, MCA, is amended to read:

**"76-1-202. Qualifications of citizen members of city-county planning board.** (1) The citizen members of the city-county planning board ~~shall~~ must be resident ~~freeholders~~ real property owners in the area over which the planning board has jurisdiction; ~~provided, however, that at~~ At least two of ~~such~~ the citizen members ~~shall~~ must be resident ~~freeholders~~ real property owners in the area, if any, outside the city limits over which the planning board has jurisdiction, and the two members appointed by the county commissioners ~~shall~~ must reside outside the city limits but within the jurisdictional area of the planning board.

(2) Any citizen appointee may be removed from office by a majority vote of the governing body of the governmental unit represented by ~~such~~ the appointee."

***MSK Comments: Clean up changing "freeholders" to "real property owners".***

**Section 9.** Section 76-1-212, MCA, is amended to read:

**"76-1-212. Citizen members of county planning board.** (1) The citizen members of the county planning board ~~shall~~ must be resident ~~freeholders~~ real property owners in the area over which the planning board has jurisdiction.

(2) Any citizen appointee may be removed from office by a majority vote of the governing body of the governmental unit represented by ~~such~~ the appointee."

***MSK Comments: Clean up changing "freeholders" to "real property owners".***

**Section 10.** Section 76-1-221, MCA, is amended to read:

**"76-1-221. Membership of city planning board.** (1) A city planning board ~~shall consist~~ consists of ~~not less~~ no fewer than seven members to be appointed as follows:

- (a) one member to be appointed by the city council from its membership;
- (b) one member to be appointed by the city council, who may in the discretion of the city council be an employee or hold public office in the city or county in which the city is located;
- (c) one member to be appointed by the mayor upon the designation by the county commissioners of the county in which the city is located;
- (d) four or more citizen members to be appointed by the mayor, two of whom ~~shall must~~ be resident freeholders within resident real property owners within the urban area, if any, outside of the city limits over which the planning board has jurisdiction under this chapter and two of whom ~~shall be~~ resident freeholders must be resident real property owners within the city limits.

(2) The clerk of the city council shall certify members appointed by its body. The certificates ~~shall~~ must be sent to and become a part of the records of the planning board. The mayor shall make a similar certification for the appointment of citizen members."

***MSK Comments: Clean up changing "freeholders" to "real property owners".***

**Section 11.** Section 76-1-505, MCA, is amended to read:

**"76-1-505. Extension of boundaries of city-county planning board jurisdictional area.** (1) The boundaries of the jurisdictional area ~~can~~ may be extended further than 4 1/2 miles from the limits of the cities only upon petition signed by 5% or more of the resident ~~freeholders~~ real property owners living in excess of 4 1/2 miles and not more than 12 miles from the limits of the cities and within the area ~~desiring~~ proposed to be included within ~~said the~~ jurisdictional limits and upon presentation of ~~said the~~ petition to the board of county commissioners.

(2) (a) ~~Thereafter~~ After the petition is presented, the board of county commissioners ~~must~~ shall by resolution set the proposed boundaries of ~~said the~~ area. and

(b) The board shall give notice of ~~their~~ its intent to add ~~said the~~ area to the jurisdictional limits ~~theretofore created~~ and of receipt of ~~said the~~ petition by ~~publication of~~ publishing notice of the time and place of that a hearing on ~~said the~~ petition and resolution will be held. Said

~~(c) The notice is to~~ must be published in a newspaper published in the county not less ~~no fewer~~ than 10 or more than 20 days prior to the date of said ~~the hearing~~ IN ACCORDANCE WITH 7-1-2121. Thereafter

(d) After the hearing, the boundaries of said ~~the area can~~ may only be set ~~upon if good cause being is~~ shown for the establishment of said ~~the~~ extended jurisdictional area and the boundaries thereof ~~of the area,~~ provided that such

(e) ~~A~~ resolution ~~shall~~ may not be adopted by the board of county commissioners if disapproved in writing by a majority of the ~~freeholders~~ resident real property owners of the territory proposed to be ~~embraced~~ included.

(3) The jurisdictional area ~~shall~~ may not extend more than 12 miles beyond the limits of any city within the jurisdictional area."

***MSK Comments: Clean up changing "freeholders" to "real property owners"; reverts back to original language regarding real property owners and the right to protest; and standardizes local government publication requirements.***

**Section 12.** Section 76-2-101, MCA, is amended to read:

**"76-2-101. Planning and zoning commission and district.** (1) Subject to the provisions of subsection (5), whenever the public interest or convenience may require and upon petition of 60% of the affected ~~freeholders~~ real property owners of the proposed district, the board of county commissioners may create a planning and zoning district and appoint a planning and zoning commission consisting of seven members.

(2) A planning and zoning district may not be created in an area that has been zoned by an incorporated city pursuant to 76-2-310 and 76-2-311.

(3) For the purposes of this part, the word "district" means any area that consists of not less than 40 acres.

(4) Except as provided in subsection (5), an action challenging the creation of a planning and zoning district must begin within ~~5-years~~ 30 days after the date of the order by the board of county commissioners creating the district.

(5) If ~~freeholders~~ real property owners representing 50% of the titled property ownership in the district protest the establishment of the district within 30 days of its creation, the board of county commissioners may not create the district. An area included in a district protested under this subsection may not be included in a zoning district petition under this section for a period of 1 year.

(6) Planning and zoning district regulations must be adopted in accordance with a growth policy adopted pursuant to Title 76, chapter 1, part 6, if a growth policy has been adopted."

***MSK Comments: Clean up changing "freeholders" to "real property owners" and limiting the time period for filing a legal action from 5 years to 30 days. This change should result in greater certainty regarding land use decisions based on zoning. Subsection (6) makes this section consistent with other zoning provisions.***

**Section 13.** Section 76-2-102, MCA, is amended to read:

**"76-2-102. Organization and operation of commission.** (1) The planning and zoning commission consists of ~~the~~ three county commissioners, the county surveyor, two citizen members, each of whom resides in a different planning and zoning district, and a county official appointed by the county commissioners. The citizen members must be appointed by the board of county commissioners to 2-year staggered terms, with one member initially appointed to a 2-year term and the remaining member initially appointed to a 1-year term. Members of the commission shall serve without compensation other than reimbursement for authorized expenses and must be residents of the county in which they serve.

(2) The commission may appoint necessary employees and fix their compensation with the approval of the board of county commissioners, select a presiding officer to serve for 1 year, appoint a secretary to keep permanent and complete records of its proceedings, and adopt rules governing the transaction of its business.

(3) Subject to 15-10-420, the finances necessary for the transaction of the planning and zoning commission's business and to pay the expenses of the employees and justified expenses of the commission's members must be paid from a levy on the taxable value of all taxable property within the district."

***MSK Comments: Clean up allowing three members of a five member commission to constitute a planning and zoning commission.***

**NEW SECTION. Section 14. Violations and penalties.** (1) A **KNOWING, NEGLIGENT, OR PURPOSEFUL** violation of this part or of a resolution adopted pursuant to this part is a misdemeanor and shall be punishable by a fine of up to \$500 or by imprisonment in the county jail for a term not exceeding 6 months, or both. ~~The violation is an absolute liability offense as provided for in 45-2-104.~~



(2) The governing body may also provide civil penalties not to exceed \$100 for a violation of this part or of a resolution adopted pursuant to this part. Each day of violation constitutes a separate violation. A GOVERNING BODY MAY NOT ASSESS A FINE FOR ANY PERIOD OF TIME PRIOR TO THE VIOLATOR BEING GIVEN NOTICE IN WRITING OF THE VIOLATION.

*MSK Comments: Currently, there is no enforcement mechanism for Part 1 zoning violations. While the "misdemeanor" provision is found in Part 2 and Part 3 (county and municipal zoning), there is no civil penalty provision. The amendments clarify the zoning violation sections of law by allowing local government to use either civil or criminal enforcement mechanisms to enforce Part 1 county zoning while providing basic due process protections. The Senate amendments satisfy the code commissioner's concern with these sections. See also Sections 20 and 24 of the bill below for similar changes to county Part 2 zoning and municipal zoning.*

**Section 15.** Section 76-2-201, MCA, is amended to read:

**"76-2-201. County zoning authorized.** (1) For the purpose of promoting the public health, safety, morals, and general welfare, a board of county commissioners that has adopted a growth policy pursuant to chapter 1 is authorized to adopt zoning regulations for all or parts of the jurisdictional area in accordance with the provisions of this part.

~~(2) For the purpose of promoting the public health, safety, morals, and general welfare, a board of county commissioners that adopted a master plan pursuant to Title 76, chapter 1, before October 1, 1999, may, until October 1, 2006, adopt or revise zoning regulations that are consistent with the master plan."~~

*MSK Comments: This language was only effective until October 2006 and is no longer needed. See also Section 5 of this bill, above.*

**Section 16.** Section 76-2-202, MCA, is amended to read:

**"76-2-202. Establishment of zoning districts -- regulations.** (1) (a) Within the unincorporated portions of a jurisdictional area that has been established under provisions of 76-1-501 through 76-1-503 or 76-1-504 through 76-1-507 and for the purposes provided in 76-2-201, the board of county commissioners may by resolution establish zoning districts and zoning regulations for all or part of the jurisdictional area establish zoning regulations for the entire jurisdictional area or divide the county into zoning districts with zoning regulations that are considered best suited to carry out

the purposes of this part. By establishing zoning regulations, the board may regulate and restrict the density, erection, construction, reconstruction, alteration, repair, location, or use of buildings or structures or the use of land.

(b) An action challenging the creation of a zoning district or adoption of zoning regulations must be commenced within 5 years 30 days after the date of the order by the board of county commissioners creating the district or adopting the regulations.

~~(2) Within some zoning districts, it is lawful and within others it is unlawful to erect, construct, alter, or maintain certain buildings or to carry on certain trades, industries, or callings.~~

—(3) In a proceeding for a permit or variance to place manufactured housing within a residential zoning district, there is a rebuttable presumption that placement of a manufactured home will not adversely affect property values of conventional housing.

~~(4) Within each district the height and bulk of future buildings and the area of the yards, courts, and other open spaces and the future uses of the land or buildings must be limited and future building setback lines must be established.~~

~~(5)(3) All regulations must be uniform for each class or kind of buildings throughout a district, but the~~ The regulations in one district may differ from those in other districts.

~~(6)(4)~~ As used in this section, "manufactured housing" means a single-family dwelling for a single household, built offsite in a factory on or after January 1, 1990, that is placed on a permanent foundation, is at least 1,000 square feet in size, has a pitched roof and siding and roofing materials that are customarily, as defined by local regulations, used on site-built homes, and is in compliance with the applicable prevailing standards of the United States department of housing and urban development at the time of its production. A manufactured home does not include a mobile home or housetrailer, as defined in 15-1-101.

~~(7)(5) Nothing contained in this~~ This section may not be construed to limit conditions imposed in historic districts, local design review standards, existing covenants, or the ability to enter into covenants pursuant to Title 70, chapter 17, part 2."

***MSK Comments: Again, among numerous clarifications, the largest policy implications are the change of appeal deadlines from 5 years to 30 days [See also Section 12, above] and the removal of specific zoning requirements [See Subsection (4) stricken above]. The change from 5 years to 30 days to appeal is expected to lead to greater certainty for the***

*development community. The removal of the specific zoning requirements confers no new authority on local governments but does allow greater flexibility in what a local government may regulate. For example, currently a local government may not regulate density, or sexually oriented businesses for that matter, without also regulating building height and building set backs within the entire district.*

**Section 17.** Section 76-2-203, MCA, is amended to read:

**"76-2-203. Criteria and guidelines for zoning regulations.** (1) Zoning regulations must be:

(a) made in accordance with the growth policy ~~or a master plan, as provided for in 76-2-201(2); and~~

(b) designed to:

(i) ~~lessen congestion in the streets;~~

~~—(ii) secure safety from fire, panic, and other dangers;~~

~~(iii)(ii) promote public health, public safety, and general welfare; and~~

(iii) facilitate the adequate and efficient provision of water, sewer services, schools, parks, transportation, and other public requirements.

~~(iv) provide adequate light and air;~~

~~—(v) prevent the overcrowding of land;~~

~~—(vi) avoid undue concentration of population; and~~

~~—(vii) facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements.~~

(2) ~~Zoning regulations must be made with reasonable consideration, among other things, to~~ In the adoption of zoning regulations, the board of county commissioners shall consider:

(a) provision of adequate light and air;

(b) promotion of efficient and safe traffic circulation and nonmotorized transportation choices;

(c) efficient growth in the vicinity of cities and towns;

(d) avoidance, significant reduction, or mitigation of adverse impacts on agriculture, agricultural water use facilities, local services, the natural environment, wildlife, and wildlife habitat;

(e) the character of the district and its peculiar suitability for particular uses; and

(f) and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout the jurisdictional area.

(3) Zoning regulations must, as nearly as possible, be made compatible with the zoning ordinances of ~~the municipality within the jurisdictional area~~ nearby municipalities."

***MSK Comments: This section is intended to reflect a more "modern" appreciation of the purposes and benefits of county zoning.***

**Section 18.** Section 76-2-205, MCA, is amended to read:

**"76-2-205. Procedure for adoption of regulations and boundaries.**

The board of county commissioners shall observe the following procedures in the establishment or revision of boundaries for zoning districts and in the adoption or amendment of zoning regulations:

(1) Notice of a public hearing on the proposed zoning district boundaries and of regulations for the zoning district must be published once a week for 2 weeks in a newspaper of general circulation within the county. The notice must state:

- (a) the boundaries of the proposed district;
- (b) the general character of the proposed zoning regulations;
- (c) the time and place of the public hearing;
- (d) that the proposed zoning regulations are on file for public inspection at the office of the county clerk and recorder.

(2) At the public hearing, the board of county commissioners shall give the public an opportunity to be heard regarding the proposed zoning district and regulations.

(3) After the public hearing, the board of county commissioners shall review the proposals of the planning board and shall make any revisions or amendments that it determines to be proper.

(4) The board of county commissioners may pass a resolution of intention to create a zoning district and to adopt zoning regulations for the district.

(5) The board of county commissioners shall publish notice of passage of the resolution of intention once a week for 2 weeks in a newspaper of general circulation within the county. The notice must state:

- (a) the boundaries of the proposed district;
- (b) the general character of the proposed zoning regulations;
- (c) that the proposed zoning regulations are on file for public inspection at the office of the county clerk and recorder;

(d) that for 30 days after first publication of this notice, the board of county commissioners will receive written protests to the creation of the zoning district or to the zoning regulations from persons owning real property within the district whose names appear on the last-completed assessment roll of the county.

(6) Within 30 days after the expiration of the protest period, the board of county commissioners may in its discretion adopt the resolution creating the

zoning district or establishing the zoning regulations for the district. However, if 40% of the ~~freeholders~~ real property owners within the district whose names appear on the last-completed assessment roll or if ~~freeholders~~ real property owners representing 50% of the titled property ownership whose property is taxed for agricultural purposes under 15-7-202 or whose property is taxed as forest land under Title 15, chapter 44, part 1, have protested the establishment of the district or adoption of the regulations, the board of county commissioners may not adopt the resolution and a further zoning resolution may not be proposed for the district for a period of 1 year."

***MSK Comments: Clean up changing "freeholders" to "real property owners".***

**Section 19.** Section 76-2-206, MCA, is amended to read:

**"76-2-206. Interim zoning map or regulation.** (1) The board of county commissioners may adopt an interim zoning map or regulation as an emergency measure in order to promote the public health, safety, morals, and general welfare if:

(a) the purpose of the interim zoning map or regulation is to classify and regulate those uses and related matters that constitute the emergency; and

(b) the county:

(i) is conducting or in good faith intends to conduct studies within a reasonable time; or

(ii) has held or is holding a hearing for the purpose of considering any of the following:

(A) a growth policy;

(B) zoning regulations; or

(C) a revision to a growth policy, ~~to a master plan, as provided for in 76-1-604(6) and 76-2-201(2),~~ or to zoning regulations pursuant to this part.

(2) An interim resolution must be limited to 1 year from the date it becomes effective. The board of county commissioners may extend the interim resolution for 1 year, but not more than one extension may be made."

***MSK Comments: Clean up removing references to "master plans". See also Section 5, above.***

**Section 20.** Section 76-2-211, MCA, is amended to read:

**"76-2-211. Violations and penalties.** (1) A KNOWING, NEGLIGENT, OR PURPOSEFUL violation of this part or ~~any of a~~ resolution adopted pursuant ~~thereto~~ to this part is a misdemeanor and shall be punishable by a

fine ~~not exceeding of up to \$500 or by imprisonment in the county jail for a term not exceeding 6 months, or both. The violation is an absolute liability offense as provided for in 45-2-104.~~

(2) The governing body may also provide civil penalties not to exceed \$100 for a violation of this part or of a resolution adopted pursuant to this part. Each day of violation constitutes a separate violation. A GOVERNING BODY MAY NOT ASSESS A FINE FOR ANY PERIOD OF TIME PRIOR TO THE VIOLATOR BEING GIVEN NOTICE IN WRITING OF THE VIOLATION."

*MSK Comments: Currently, while the "misdemeanor" provision is found in Part 2 county zoning, there is no civil penalty provision. The amendments clarify the zoning violation sections of law by allowing local government to use either civil or criminal enforcement mechanisms to enforce Part 2 county zoning while providing basic due process protections. These amendments satisfy the code commissioner's concern with these sections. See also Sections 14 and 24 of the bill for similar changes to county Part 1 zoning and municipal zoning.*

~~—Section 20. Section 76-2-228, MCA, is amended to read:~~

~~"76-2-228. Awarding of costs upon appeal from board decision. Costs shall may not be allowed against the board county unless it shall appear appears to the court that it the entity making the final decision acted with gross negligence, in bad faith, or with malice in making the decision appealed from."~~

*MSK Comments: Reverts back to existing code language.*

**Section 21.** Section 76-2-302, MCA, is amended to read:

**"76-2-302. Zoning districts.** (1) For the purposes of 76-2-301, the local city or town council or other legislative body may divide the municipality into districts of the number, shape, and area as are considered best suited to carry out the purposes of this part. Within the districts, it may regulate and restrict the erection, construction, reconstruction, alteration, repair, or use of buildings, structures, or land.

(2) All regulations must be uniform for each class or kind of buildings throughout each district, but the regulations in one district may differ from those in other districts.

(3) In a proceeding for a permit or variance to place manufactured housing within a residential zoning district, there is a rebuttable presumption that placement of a manufactured home will not adversely affect property values of conventional housing.

(4) As used in this section, "manufactured housing" means a ~~single-family dwelling for a single household~~, built offsite in a factory on or after January 1, 1990, that is placed on a permanent foundation, is at least 1,000 square feet in size, has a pitched roof and siding and roofing materials that are customarily, as defined by local regulations, used on site-built homes, and is in compliance with the applicable prevailing standards of the United States department of housing and urban development at the time of its production. A manufactured home does not include a mobile home or housetrailer, as defined in 15-1-101.

(5) This section may not be construed to limit conditions imposed in historic districts, local design review standards, existing covenants, or the ability to enter into covenants pursuant to Title 70, chapter 17, part 2."

*MSK Comments: Clean up removing a need to define "single-family dwelling".*

**Section 22.** Section 76-2-303, MCA, is amended to read:

**"76-2-303. Procedure to administer certain annexations and zoning laws -- hearing and notice.** (1) The city or town council or other legislative body of a municipality shall provide for the manner in which regulations and restrictions and the boundaries of districts are determined, established, enforced, and changed, subject to the requirements of subsection (2).

(2) A regulation, restriction, or boundary may not become effective until after a public hearing in relation to the regulation, restriction, or boundary at which parties in interest and citizens have an opportunity to be heard has been held. At least 15 days' notice of the time and place of the hearing must be published in an official paper or a paper of general circulation in the municipality.

(3) (a) For municipal annexations, a municipality may conduct a hearing on the annexation in conjunction with a hearing on the zoning of the proposed annexation, provided that the proposed municipal zoning regulations for the annexed property:

(i) authorize land uses comparable to the land uses authorized by county zoning;

(ii) authorize land uses that are consistent with land uses approved by the board of county commissioners or the board of adjustment pursuant to part 1 or 2 of this chapter; or

(iii) are consistent with zoning requirements recommended in a growth policy adopted pursuant to chapter 1 of this title ~~or in a master plan, as provided for in 76-2-304(3)~~, for the annexed property.

(b) A joint hearing authorized under this subsection fulfills a municipality's obligation regarding zoning notice and public hearing for a proposed annexation."

**MSK Comments:** *Clean up removing the reference to "master plan". See also my notes to Sections 5 and 19, above.*

**Section 23.** Section 76-2-304, MCA, is amended to read:

**"76-2-304. Purposes of zoning Criteria and guidelines for zoning regulations.** (1) Zoning regulations must be:

- (a) ~~except as provided in subsection (3), made in accordance with a growth policy; and~~
- (b) designed to:
  - (i) ~~lessen congestion in the streets;~~
  - ~~(ii) secure safety from fire, panic, and other dangers;~~
  - ~~(iii)(ii) promote public health, public safety, and the general welfare; and~~
  - (iii) facilitate the adequate and efficient provision of water, sewer services, schools, parks, transportation, and other public requirements.
  - ~~(iv) provide adequate light and air;~~
  - ~~(v) prevent the overcrowding of land;~~
  - ~~(vi) avoid undue concentration of population; and~~
  - ~~(vii) facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements.~~

(2) ~~Zoning regulations must be made with reasonable consideration, among other things, to~~ In the adoption of zoning regulations, the municipal governing body shall consider:

- (a) provision of adequate light and air;
- (b) promotion of efficient and safe traffic circulation and nonmotorized transportation choices;
- (c) promotion of efficient urban growth;
- (d) avoidance, significant reduction, or mitigation of adverse impacts on agriculture, agricultural water use facilities, local services, the natural environment, wildlife, and wildlife habitat;
- (e) the character of the district and its peculiar suitability for particular uses; and
- (f) and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout the municipality jurisdictional area.

~~(3) Until October 1, 2006, zoning regulations may be adopted or revised in accordance with a master plan that was adopted pursuant to Title 76, chapter 1, before October 1, 1999."~~



*MSK Comments: This section is intended to reflect a more "modern" appreciation of the purposes and benefits of city zoning and to make this section consistent with county zoning. See Section 17, above.*

**Section 24.** Section 76-2-315, MCA, is amended to read:

**"76-2-315. Violations and penalties.** (1) A KNOWING, NEGLIGENT, OR PURPOSEFUL violation of this part or of such an ordinance or regulation made adopted pursuant to 76-2-308(1) is a misdemeanor, and such the city or town council or other legislative body may provide for the punishment thereof of the violation by a fine of up to \$500, or by imprisonment in the county jail for a term not exceeding 6 months, or both. The violation is an absolute liability offense as provided for in 45-2-104.

(2) It is also empowered to The city or town council or other legislative body may provide civil penalties not to exceed \$100 for such a violation of this part or of an ordinance or regulation adopted pursuant to 76-2-308(1). Each day of violation constitutes a separate violation. A CITY OR TOWN COUNCIL OR OTHER LEGISLATIVE BODY MAY NOT ASSESS A FINE FOR ANY PERIOD OF TIME PRIOR TO THE VIOLATOR BEING GIVEN NOTICE IN WRITING OF THE VIOLATION."

*MSK Comments: Currently, while the "misdemeanor" provision is found in municipal zoning, there is no civil penalty provision. The amendments clarify the zoning violation sections of law by allowing local government to use either civil or criminal enforcement mechanisms to enforce municipal zoning while providing basic due process protections. These amendments satisfy the code commissioner's concern with these sections. See also Sections 14 and 20 of the bill, above, for similar changes to county Parts 1 and 2 zoning.*

~~Section 25.~~ Section 76-2-328, MCA, is amended to read:

~~"76-2-328. Awarding of costs upon appeal from board decision.~~

~~Costs shall may not be allowed against the board municipality unless it shall appear appears to the court that it the entity making the final decision acted with gross negligence, in bad faith, or with malice in making the decision appealed from."~~

*MSK Comments: Reverts back to existing code language.*

**Section 25.** Section 76-2-412, MCA, is amended to read:

**"76-2-412. Relationship of foster homes, kinship foster homes, youth shelter care facilities, youth group homes, community residential facilities, and day-care homes to zoning.** (1) A foster home, kinship foster

home, youth shelter care facility, or youth group home operated under the provisions of 52-2-621 through 52-2-623 or a community residential facility serving eight or fewer persons is considered a residential use of property for purposes of zoning if the home provides care on a 24-hour-a-day basis.

(2) A family day-care home or a group day-care home registered by the department of public health and human services under Title 52, chapter 2, part 7, is considered a residential use of property for purposes of zoning.

(3) The facilities listed in subsections (1) and (2) are a permitted use in all residential zones, including but not limited to residential zones for ~~single-family dwellings~~ for single households. Any safety or sanitary regulation of the department of public health and human services or any other agency of the state or a political subdivision of the state that is not applicable to residential occupancies in general may not be applied to a community residential facility serving 8 or fewer persons or to a day-care home serving 12 or fewer children.

(4) This section may not be construed to prohibit a city or county from requiring a conditional use permit in order to maintain a home pursuant to the provisions of subsection (1) if the home is licensed by the department of public health and human services. A city or county may not require a conditional use permit in order to maintain a day-care home registered by the department of public health and human services."

***MSK Comments: Removes need to define "single family dwelling".***

**Section 26.** Section 76-3-207, MCA, is amended to read:

**"76-3-207. Divisions or aggregations of land exempted from review but subject to survey requirements and zoning regulations -- exceptions -- fees for examination of division.** (1) Except as provided in subsection (2), unless the method of disposition is adopted for the purpose of evading this chapter, the following divisions or aggregations of land are ~~not subdivisions under exempt from review under parts 5 and 6 of NOT SUBDIVISIONS UNDER~~ this chapter; ~~but~~ **BUT** are subject to the surveying requirements of 76-3-401 for divisions or aggregations of land ~~not amounting to OTHER THAN~~ subdivisions; and are subject to applicable zoning regulations adopted under Title 76, chapter 2:

(a) divisions made outside of platted subdivisions for the purpose of relocating common boundary lines between adjoining properties;

(b) divisions made outside of platted subdivisions for the purpose of a single gift or sale in each county to each member of the landowner's immediate family;

(c) divisions made outside of platted subdivisions by gift, sale, or agreement to buy and sell in which the parties to the transaction enter a covenant running with the land and revocable only by mutual consent of the governing body and the property owner that the divided land will be used exclusively for agricultural purposes;

(d) for five or fewer lots within a platted subdivision, relocation of common boundaries and the aggregation of lots; ~~and~~

(e) divisions made for the purpose of relocating a common boundary line between a single lot within a platted subdivision and adjoining land outside a platted subdivision. A restriction or requirement on the original platted lot or original unplatted parcel continues to apply to those areas.

(f) aggregation of lots when a certificate of survey or subdivision plat will show SHOWS that the boundaries of the original parcels have been expunged ELIMINATED and the boundaries of a larger aggregate parcel will be depicted ARE ESTABLISHED. A restriction or requirement on the original platted lot or original unplatted parcel continues to apply to those areas.

(2) Notwithstanding the provisions of subsection (1):

(a) within a platted subdivision filed with the county clerk and recorder, a division, redesign, or rearrangement of lots that results in an increase in the number of lots or that redesigns or rearranges six or more lots must be reviewed and approved by the governing body ~~and~~ before an amended plat ~~must~~ may be filed with the county clerk and recorder;

(b) a change in use of the land exempted under subsection (1)(c) for anything other than agricultural purposes subjects the division to ~~the provisions review under parts 5 and 6~~ THE PROVISIONS of this chapter.

(3) (a) Subject to subsection (3)(b), a division or aggregation of land may not be made under this section unless the county treasurer has certified that all real property taxes and special assessments assessed and levied on the land to be divided or aggregated have been paid.

(b) (i) If a division or aggregation of land includes centrally assessed property and the property taxes applicable to the division or aggregation of land are not specifically identified in the tax assessment, the department of revenue shall prorate the taxes applicable to the land being divided or aggregated on a reasonable basis. The owner of the centrally assessed property shall ensure that the prorated real property taxes and special assessments are paid on the land being sold before the division or aggregation of land is made.

(ii) The county treasurer may accept the amount of the tax prorated pursuant to this subsection (3)(b) as a partial payment of the total tax that is due.

(4) The governing body may examine a division or aggregation of land to determine whether or not the requirements of this chapter apply to the division or aggregation and may establish reasonable fees, not to exceed \$200, for the examination."

***MSK Comments: Clarifies that certain aggregations of land are also exempt from subdivision review. The Senate amendments to Subsection (1) revert back to existing code language on the question of whether or not use of these exemptions creates a "subdivision". (It does not.)***

**Section 27.** Section 76-3-303, MCA, is amended to read:

**"76-3-303. Contract for deed permitted if buyer protected.**

Notwithstanding the provisions of 76-3-301, after the preliminary plat of a proposed subdivision has been approved or conditionally approved, the subdivider may enter into contracts to sell lots in the proposed subdivision if all of the following conditions are met:

(1) ~~that under~~ the terms of the contracts must provide that the purchasers of lots in the proposed subdivision make any payments to an escrow agent which must be a bank or savings and loan association chartered to do business in the state of Montana;

(2) ~~that under~~ the terms of the contracts and the escrow agreement must provide that the payments made by purchasers of lots in the proposed subdivision may not be distributed by the escrow agent to the subdivider until the final plat of the subdivision is filed with the county clerk and recorder;

(3) ~~that~~ the contracts and the escrow agreement must provide that if the final plat of the proposed subdivision is not filed with the county clerk and recorder within 2 years of the preliminary plat approval, the escrow agent shall immediately refund to each purchaser any payments ~~he~~ the purchaser has made under the contract;

(4) ~~that the county treasurer has certified that no real property taxes assessed and levied on the land to be divided are delinquent~~ all taxes and fees assessed and levied have been paid; and

(5) ~~that~~ the contracts contain the following language conspicuously set out ~~therein~~: "The real property ~~which~~ that is the subject ~~hereof~~ of this contract has not been finally platted, and until a final plat identifying the property has been filed with the county clerk and recorder, title to the property cannot be transferred in any manner."."

*MSK Comments: Clean up.*

**Section 28.** Section 76-3-504, MCA, is amended to read:

**"76-3-504. Subdivision regulations -- contents.** (1) The subdivision regulations adopted under this chapter must, at a minimum:

(a) list the materials that must be included in a subdivision application in order for the application to be determined to contain the required elements for the purposes of the review required in 76-3-604(1);

(b) except as provided in ~~76-3-210~~, 76-3-509, or 76-3-609, require the subdivider to submit to the governing body an environmental assessment as prescribed in 76-3-603;

(c) establish procedures consistent with this chapter for the submission and review of subdivision applications and amended applications;

(d) prescribe the form and contents of preliminary plats and the documents to accompany final plats;

(e) provide for the identification of areas that, because of natural or human-caused hazards, are unsuitable for subdivision development and prohibit subdivisions in these areas unless the hazards can be eliminated or overcome by approved construction techniques;

(f) prohibit subdivisions for building purposes in areas located within the floodway of a flood of 100-year frequency, as defined by Title 76, chapter 5, or determined to be subject to flooding by the governing body;

(g) prescribe standards for:

(i) the design and arrangement of lots, streets, and roads;

(ii) grading and drainage;

(iii) subject to the provisions of 76-3-511, water supply and sewage and solid waste disposal that meet the:

(A) regulations adopted by the department of environmental quality under 76-4-104 for subdivisions that will create one or more parcels containing less than 20 acres; and

(B) standards provided in 76-3-604 and 76-3-622 for subdivisions that will create one or more parcels containing 20 acres or more and less than 160 acres; and

(iv) the location and installation of public utilities;

(h) provide procedures for the administration of the park and open-space requirements of this chapter;

(i) provide for the review of subdivision applications by affected public utilities and those agencies of local, state, and federal government identified during the preapplication consultation conducted pursuant to subsection (1)(q) or those having a substantial interest in a proposed subdivision. A

public utility or agency review may not delay the governing body's action on the application beyond the time limits specified in this chapter, and the failure of any agency to complete a review of an application may not be a basis for rejection of the application by the governing body.

(j) when a subdivision creates parcels with lot sizes averaging less than 5 acres, require the subdivider to:

(i) reserve all or a portion of the appropriation water rights owned by the owner of the land to be subdivided and transfer the water rights to a single entity for use by landowners within the subdivision who have a legal right to the water and reserve and sever any remaining surface water rights from the land;

(ii) if the land to be subdivided is subject to a contract or interest in a public or private entity formed to provide the use of a water right on the subdivision lots, establish a landowner's water use agreement administered through a single entity that specifies administration and the rights and responsibilities of landowners within the subdivision who have a legal right and access to the water; or

(iii) reserve and sever all surface water rights from the land;

(k) (i) except as provided in subsection (1)(k)(ii), require the subdivider to establish ditch easements in the subdivision that:

(A) are in locations of appropriate topographic characteristics and sufficient width to allow the physical placement and unobstructed maintenance of open ditches or belowground pipelines for the delivery of water for irrigation to persons and lands legally entitled to the water under an appropriated water right or permit of an irrigation district or other private or public entity formed to provide for the use of the water right on the subdivision lots;

(B) are a sufficient distance from the centerline of the ditch to allow for construction, repair, maintenance, and inspection of the ditch; and

(C) prohibit the placement of structures or the planting of vegetation other than grass within the ditch easement without the written permission of the ditch owner.

(ii) Establishment of easements pursuant to this subsection (1)(k) is not required if:

(A) the average lot size is 1 acre or less and the subdivider provides for disclosure, in a manner acceptable to the governing body, that adequately notifies potential buyers of lots that are classified as irrigated land and may continue to be assessed for irrigation water delivery even though the water may not be deliverable; or

(B) the water rights are removed or the process has been initiated to remove the water rights from the subdivided land through an appropriate legal or administrative process and if the removal or intended removal is denoted on the preliminary plat. If removal of water rights is not complete upon filing of the final plat, the subdivider shall provide written notification to prospective buyers of the intent to remove the water right and shall document that intent, when applicable, in agreements and legal documents for related sales transactions.

(l) require the subdivider, unless otherwise provided for under separate written agreement or filed easement, to file and record ditch easements for unobstructed use and maintenance of existing water delivery ditches, pipelines, and facilities in the subdivision that are necessary to convey water through the subdivision to lands adjacent to or beyond the subdivision boundaries in quantities and in a manner that are consistent with historic and legal rights;

(m) require the subdivider to describe, dimension, and show public utility easements in the subdivision on the final plat in their true and correct location. The public utility easements must be of sufficient width to allow the physical placement and unobstructed maintenance of public utility facilities for the provision of public utility services within the subdivision.

(n) establish whether the governing body, its authorized agent or agency, or both will hold public hearings;

(o) establish procedures describing how the governing body or its authorized agent or agency will address information presented at the hearing or hearings held pursuant to 76-3-605 and 76-3-615;

(p) establish criteria that the governing body or reviewing authority will use to determine whether a proposed method of disposition using the exemptions provided in 76-3-201 or 76-3-207 is an attempt to evade the requirements of this chapter. The regulations must provide for an appeals process to the governing body if the reviewing authority is not the governing body.

(q) establish a preapplication process that:

(i) allows a subdivider to meet with the authorized agent or agency, other than the governing body, that is designated by the governing body to review subdivision applications prior to the subdivider submitting the application;

(ii) requires, for informational purposes only, identification of the state laws, local regulations, and growth policy provisions, if a growth policy has been adopted, that may apply to the subdivision review process;

(iii) requires a list to be made available to the subdivider of the public utilities, those agencies of local, state, and federal government, and any other

entities that may be contacted for comment on the subdivision application and the timeframes that the public utilities, agencies, and other entities are given to respond. If, during the review of the application, the agent or agency designated by the governing body contacts a public utility, agency, or other entity that was not included on the list originally made available to the subdivider, the agent or agency shall notify the subdivider of the contact and the timeframe for response.

(iv) requires that a preapplication meeting take place no more than 30 days from the date that the authorized agent or agency receives a written request for a preapplication meeting from the subdivider; and

(v) establishes a time limit after a preapplication meeting by which an application must be submitted as provided in 76-3-604;

(r) establish a time limit within which the written decision required under 76-3-620 must be provided to the applicant.

***MSK Comments: Subsection (1)(r) above requires local governments to establish a timeline within which to issue written subdivision decisions. See also Section 35, below.***

(2) In order to accomplish the purposes described in 76-3-501, the subdivision regulations adopted under 76-3-509 and this section may include provisions that are consistent with this section that promote cluster development.

(3) The governing body may establish deadlines for submittal of subdivision applications."

**Section 29.** Section 76-3-506, MCA, is amended to read:

**"76-3-506. Provision for granting variances.** Subdivision regulations may authorize the governing body, after public notice or a public hearing on the variance request before the governing body or its designated agent or agency, to grant variances from the regulations when strict compliance will result in undue hardship and when it is not essential to the public welfare. Any variance granted pursuant to this section must be based on specific variance criteria contained in the subdivision regulations."

***MSK Comments: Requires some level of public involvement in variance requests. This amendment will allow a local government to publish a notice of the variance requests and then, depending on the level of public interest to schedule a hearing if warranted. Many jurisdictions already require public hearings for subdivision variance requests as part of the regularly schedule subdivision hearing. Note: Zoning variance requests to Boards of Adjustment already require public notice and a hearing.***



**Section 30.** Section 76-3-507, MCA, is amended to read:

**"76-3-507. Provision for bonding requirements to ensure construction of public improvements.** (1) Except as provided in subsection subsections (2) and (4), the governing body shall require the subdivider to complete required improvements within the proposed subdivision prior to the approval of the final plat.

(2) (a) In lieu of the completion of the construction of any public improvements prior to the approval of a final plat, the governing body shall at the subdivider's option allow the subdivider to provide or cause to be provided a bond or other reasonable security, in an amount and with surety and conditions satisfactory to the governing body, providing for and securing the construction and installation of the improvements within a period specified by the governing body and expressed in the bonds or other security. The governing body shall reduce ~~bond~~ security requirements commensurate with the completion of improvements.

(b) In lieu of requiring a bond or other means of security for the construction or installation of all the required public improvements under subsection (2)(a), the governing body may approve an incremental payment or guarantee plan. The improvements in a prior increment must be completed or the payment or guarantee of payment for the costs of the improvements incurred in a prior increment must be satisfied before development of future increments.

(3) Approval by the governing body of a final plat prior to the completion of required improvements and without the provision of the security required under subsection (2) is not an act of a legislative body for the purposes of 2-9-111.

(4) The governing body may adopt regulations requiring that a certain percentage of improvements or specific types of improvements necessary to protect public health and safety be completed before allowing bonding or other reasonable security under subsection (2)(a) for purposes of filing a final plat."

*MSK Comments: Currently, local governments have no authority to require a subdivider to install improvements as long as the subdivider has provided adequate security that such improvements will be eventually installed. Local government representatives on the Task Force expressed concern that public safety could be threatened by allowing a subdivider to, for example, build, sell, and cause to be occupied, houses that did not have*

*adequate roads or other critical infrastructure. Under new subsection (4), the local government could require 100% installation of all improvements for every subdivision but only if that requirement was made through regulation, which adds some protection for the development community.*

**Section 31.** Section 76-3-603, MCA, is amended to read:

**"76-3-603. Contents of environmental assessment -- when environmental assessment not required.** (1) When required, the environmental assessment must accompany the subdivision application and must include:

~~(1)~~(a) for a major subdivision:

~~(a)~~(i) a description of every body or stream of surface water that may be affected by the proposed subdivision, together with available ground water information, and a description of the topography, vegetation, and wildlife use within the area of the proposed subdivision;

~~(b)~~(ii) a summary of the probable impacts of the proposed subdivision based on the criteria described in 76-3-608; and

~~(c)~~(iii) a community impact report containing a statement of anticipated needs of the proposed subdivision for local services, including education and busing; roads and maintenance; water, sewage, and solid waste facilities; and fire and police protection; and

~~(d)~~(iv) additional relevant and reasonable information related to the applicable regulatory criteria adopted under 76-3-501 as may be required by the governing body;

~~(2)~~(b) except as provided in 76-3-609, for a minor subdivision, a summary of the probable impacts of the proposed subdivision based on the criteria described in 76-3-608.

(2) The governing body may, by regulation, exempt subdivisions totally within an area that is covered by all of the following from the requirement of an environmental assessment:

(a) a growth policy adopted pursuant to chapter 1;

(b) zoning regulations, pursuant to chapter 2, parts 2 and 3, that promote public health and safety and that avoid, significantly reduce, or mitigate adverse impacts on agriculture, agricultural water use facilities, local services, the natural environment, wildlife, and wildlife habitat; and

(c) a strategy for development, maintenance, and replacement of public infrastructure pursuant to 76-1-601 that includes, for the area where the subdivision is proposed:

(i) a description, using maps and text, of the existing public facilities including current levels of service; and

(ii) a description of future public facilities, using maps and text, that will be necessary to efficiently serve the area of the projected development.

(3) When an environmental assessment is not required under this section, the governing body or its authorized agent or agency shall prepare and certify a written statement of the reasons for granting the exemption. A copy of this statement must accompany the proposed subdivision's preliminary plat when it is submitted for review."

***MSK Comments: The new language in this section is, in some respects, a restatement and relocation of existing law. See stricken Section 32(6)(a), below. However, under the proposed language, it is now more difficult to qualify for this exemption. These changes also require a repeal of 76-3-210. See Section 37 of this bill, below.***

**Section 32.** Section 76-3-608, MCA, is amended to read:

**"76-3-608. Criteria for local government review.** (1) The basis for the governing body's decision to approve, conditionally approve, or deny a proposed subdivision is whether the subdivision application, preliminary plat, applicable environmental assessment, public hearing, planning board recommendations, or additional information demonstrates that development of the proposed subdivision meets the requirements of this chapter. A governing body may not deny approval of a proposed subdivision based solely on the subdivision's impacts on educational services.

(2) The governing body shall issue written findings of fact that weigh the criteria in subsection (3), as applicable.

(3) A subdivision proposal must undergo review for the following primary criteria:

(a) except when the governing body has established an exemption pursuant to subsection (6) of this section or except as provided in 76-3-509 or in 76-3-609(2) or (4), ~~the impact adverse impacts~~ THE IMPACT on agriculture, agricultural water ~~user use~~ USER facilities, local services, the natural environment, wildlife, ~~and~~ wildlife habitat, and public health and safety;

***MSK Comments: SLG amendments revert back to existing code language.***

(b) compliance with:

(i) the survey requirements provided for in part 4 of this chapter;

(ii) the local subdivision regulations provided for in part 5 of this chapter;  
and

(iii) the local subdivision review procedure provided for in this part;

(c) the provision of easements within and to the proposed subdivision for the location and installation of any planned utilities; and

***MSK Comments: This change ensures that the easements indicate how the utilities get to the subdivision and not just where the utilities go in the subdivision.***

(d) the provision of legal and physical access to each parcel within the proposed subdivision and the required notation of that access on the applicable plat and any instrument of transfer concerning the parcel.

(4) The governing body may require the subdivider to design the proposed subdivision to reasonably minimize potentially significant adverse impacts identified through the review required under subsection (3). The governing body shall issue written findings to justify the reasonable mitigation required under this subsection (4).

(5) (a) In reviewing a proposed subdivision under subsection (3) and when requiring mitigation under subsection (4), a governing body may not unreasonably restrict a landowner's ability to develop land, but it is recognized that in some instances the unmitigated impacts of a proposed development may be unacceptable and will preclude approval of the subdivision.

(b) When requiring mitigation under subsection (4), a governing body shall consult with the subdivider and shall give due weight and consideration to the expressed preference of the subdivider.

(6) The governing body may exempt proposed subdivisions that are entirely within the boundaries of designated geographic areas from the review criteria in subsection (3)(a) of this section if ~~all of the following~~ requirements in 76-3-603(2) and (3) have been met:

~~—(a) the governing body has adopted a growth policy pursuant to chapter 1 that:~~

~~—(i) addresses the criteria in subsection (3)(a);~~

~~—(ii) evaluates the impact of development on the criteria in subsection (3)(a);~~

~~—(iii) describes zoning regulations that will be implemented to address the criteria in subsection (3)(a); and~~

~~—(iv) identifies one or more geographic areas where the governing body intends to authorize an exemption from review of the criteria in subsection (3)(a); and~~

~~—(b) the governing body has adopted zoning regulations pursuant to chapter 2, part 2 or 3, that:~~

~~—(i) apply to the entire area subject to the exemption; and~~

~~—(ii) address the criteria in subsection (3)(a), as described in the growth policy.~~

**MSK Comments:** *See my comments regarding this exemption in Section 31, above.*

(7) A governing body may conditionally approve or deny a proposed subdivision as a result of the water and sanitation information provided pursuant to 76-3-622 or public comment received pursuant to 76-3-604 on the information provided pursuant to 76-3-622 only if the conditional approval or denial is based on existing subdivision, zoning, or other regulations that the governing body has the authority to enforce."

**Section 33.** Section 76-3-609, MCA, is amended to read:

**"76-3-609. Review procedure for minor subdivisions -- determination of sufficiency of application -- governing body to adopt regulations.** (1) Minor subdivisions must be reviewed as provided in this section and subject to the applicable local regulations adopted pursuant to 76-3-504.

(2) If the tract of record proposed to be subdivided has not been subdivided or created by a subdivision under this chapter or has not resulted from a tract of record that has had more than five parcels created from that tract of record under 76-3-201 or 76-3-207 since July 1, 1973, then the proposed subdivision is a first minor subdivision from a tract of record and, when legal and physical access to all lots is provided, must be reviewed as follows:

(a) Except as provided in subsection (2)(b), the governing body shall approve, conditionally approve, or deny the first minor subdivision from a tract of record within 35 working days of a determination by the reviewing agent or agency that the application contains required elements and sufficient information for review. The determination and notification to the subdivider must be made in the same manner as is provided in 76-3-604(1) through (3).

(b) The subdivider and the reviewing agent or agency may agree to an extension or suspension of the review period, not to exceed 1 year.

(c) Except as provided in subsection ~~(2)(d)(iii)~~ (2)(d)(ii), an application must include a summary of the probable impacts of the proposed subdivision based on the criteria described in 76-3-608(3).

(d) The following requirements do not apply to the first minor subdivision from a tract of record as provided in this subsection (2):

(i) the requirement to prepare an environmental assessment; and

(ii) ~~the requirement to hold a hearing on the subdivision application pursuant to 76-3-605; and~~

~~—(iii) the requirement to review the subdivision for the criteria contained in 76-3-608(3)(a) if the minor subdivision is proposed in the portion of a jurisdictional area that has adopted zoning regulations that address the criteria in 76-3-608(3)(a) in which the requirements of 76-3-603(2) and (3) have been met.~~

(e) The governing body or its authorized agent or agency may not hold a public hearing OR A SUBSEQUENT PUBLIC HEARING UNDER 76-3-615 for a first minor subdivision from a tract of record as described in this subsection (2).

***MSK Comments: SLG amendments clarify that local governments may not schedule any public hearing on a first minor subdivision.***

(e)(f) The governing body may adopt regulations that establish requirements for the expedited review of the first minor subdivision from a tract of record. The following apply to a proposed subdivision reviewed under the regulations:

(i) except as provided in subsection (2)(d) of this section, the provisions of 76-3-608(3); and

(ii) the provisions of Title 76, chapter 4, part 1, whenever approval is required by those provisions.

(3) Except as provided in subsection (4), any minor subdivision that is not a first minor subdivision from a tract of record, as provided in subsection (2), is a subsequent minor subdivision and must be reviewed as provided in 76-3-601 through 76-3-605, 76-3-608, 76-3-610 through 76-3-614, and 76-3-620.

(4) The governing body may adopt subdivision regulations that establish requirements for review of subsequent minor subdivisions that meet or exceed the requirements that apply to the first minor subdivision, as provided in subsection (2) and this chapter.

(5) (a) Review and approval, conditional approval, or denial of a subdivision under this chapter may occur only under those regulations in effect at the time that a subdivision application is determined to contain sufficient information for review as provided in subsection (2).

(b) If regulations change during the period that the application is reviewed for required elements and sufficient information, the determination of whether the application contains the required elements and sufficient information must be based on the new regulations."

**Section 34.** Section 76-3-615, MCA, is amended to read:

**"76-3-615. Subsequent hearings -- consideration of new information -- requirements for regulations.** (1) The regulations adopted pursuant to 76-3-504(1)(o) must comply with the provisions of this section.

(2) ~~The governing body shall determine whether public comments or documents presented to the governing body at a hearing held pursuant to 76-3-605 constitute:~~

~~—(a) information or analysis of information that was presented at a hearing held pursuant to 76-3-605 that the public has had a reasonable opportunity to examine and on which the public has had a reasonable opportunity to comment; or~~

~~—(b) new information regarding a subdivision application that has never been submitted as evidence or considered by either the governing body or its agent or agency at a hearing during which the subdivision application was considered~~ If a person at the final scheduled hearing or meeting on a subdivision application claims that information presented AT THAT PUBLIC HEARING OR MEETING regarding the application has never before been presented to or considered by the governing body or its authorized agent or agency IS NEW INFORMATION, the governing body shall determine whether the information constitutes new information as provided in subsection (3) THAT HAS NEVER BEFORE BEEN PRESENTED TO OR CONSIDERED BY THE GOVERNING BODY OR ITS AUTHORIZED AGENT OR AGENCY.

(3) If the governing body determines that the ~~public comments or documents constitute the information~~ IS NEW INFORMATION AS described in subsection (2)(b) (2) is new information, the governing body may:

***MSK Comments: SLG amendments further clarify how local governments determine whether or not information received is "new" information, and whether or not a subsequent public hearing is necessary.***

(a) approve, conditionally approve, or deny the proposed subdivision without basing its decision on the new information if the governing body determines that the new information is either irrelevant or not credible; or

(b) schedule or direct its agent or agency to schedule a subsequent public hearing for consideration of only the new information that may have an impact on the findings and conclusions that the governing body will rely upon in making its decision on the proposed subdivision.

(4) If a public hearing is held as provided in subsection (3)(b), the 60-working-day review period required in 76-3-604(4) is suspended and the new hearing must be noticed and held within 45 days of the governing body's determination to schedule a new hearing. After the new hearing, the 60-working-day time limit resumes at the governing body's next scheduled public meeting for which proper notice for the public ~~hearing~~ meeting on the subdivision application can be provided. The governing body may not consider any information regarding the subdivision application that is presented after the hearing when making its decision to approve, conditionally approve, or deny the proposed subdivision."

**Section 35.** Section 76-3-620, MCA, is amended to read:

**"76-3-620. Review requirements -- written statement.** In addition to the requirements of 76-3-604 and 76-3-609, following any decision by the governing body to deny or conditionally approve a proposed subdivision, the governing body shall, in accordance with the timelines established pursuant to 76-3-504(1)(r), prepare a written statement that must be provided to the applicant, that must be made available to the public, and that:

***MSK Comments: See my comments to Section 28, above.***

(1) includes information regarding the appeal process for the denial or imposition of conditions;

(2) identifies the regulations and statutes that are used in reaching the decision to deny or impose conditions and explains how they apply to the decision to deny or impose conditions;

(3) provides the facts and conclusions that the governing body relied upon in making its decision to deny or impose conditions and references documents, testimony, or other materials that form the basis of the decision; and

(4) provides the conditions that apply to the preliminary plat approval and that must be satisfied before the final plat may be approved."

**Section 36.** Section 76-3-625, MCA, is amended to read:

**"76-3-625. Violations -- actions against governing body.** (1) A person who has filed with the governing body an application for a subdivision under this chapter may bring an action in district court to sue the governing body to recover actual damages caused by a final action, decision, or order of the governing body or a regulation adopted pursuant to this chapter that is arbitrary or capricious.



(2) A party identified in subsection (3) who is aggrieved by a decision of the governing body to approve, conditionally approve, or deny an application and preliminary plat for a proposed subdivision or a final subdivision plat may, within 30 days ~~after the~~ from the date of the written decision, appeal to the district court in the county in which the property involved is located. The petition must specify the grounds upon which the appeal is made.

***MSK Comments: Clarifies that the 30-day appeal provision starts from the date of the local government's written decision and not the date of the decision itself. This is currently accepted practice and is MACO's legal position.***

(3) The following parties may appeal under the provisions of subsection (2):

- (a) the subdivider;
- (b) a landowner with a property boundary contiguous to the proposed subdivision or a private landowner with property within the county or municipality where the subdivision is proposed if that landowner can show a likelihood of material injury to the landowner's property or its value;
- (c) the county commissioners of the county where the subdivision is proposed; and
- (d) (i) a first-class municipality, as described in 7-1-4111, if a subdivision is proposed within 3 miles of its limits;  
(ii) a second-class municipality, as described in 7-1-4111, if a subdivision is proposed within 2 miles of its limits; and  
(iii) a third-class municipality or a town, as described in 7-1-4111, if a subdivision is proposed within 1 mile of its limits.

(4) For the purposes of this section, "aggrieved" means a person who can demonstrate a specific personal and legal interest, as distinguished from a general interest, who has been or is likely to be specially and injuriously affected by the decision."

**NEW SECTION. SECTION 37. REPEALER. SECTION 76-3-210, MCA, IS REPEALED.**

***MSK Comments: The intent of 76-3-210 is now represented in 76-3-603(2), Section 31, above.***

**NEW SECTION. Section 38. Codification instruction.** [Section 43 14] is intended to be codified as an integral part of Title 76, chapter 2, part 1, and the provisions of Title 76, chapter 2, part 1, apply to [section 43 14].

*MSK Comments: Ensures proper codification of the new County Part 1 zoning enforcement mechanism.*

NEW SECTION. SECTION 39. EFFECTIVE DATE --  
APPLICABILITY. [THIS ACT] IS EFFECTIVE ON PASSAGE AND  
APPROVAL AND APPLIES ON OR AFTER OCTOBER 1, 2008.

*MSK Comments: SLG amendments allow local governments until October 1, 2008 to bring their subdivision regulations into compliance with this act.*